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No. 7

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE ALUMINUM CASTINGS COMPANY, PETITIONER

v.

CARL F. ROUTZAHN, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

U. S. GOVERNMENT PRINTING OFFICE: 1929

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 198

THE ALUMINUM CASTINGS COMPANY, PETITIONER

v.

CARL F. ROUTZAHN, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the petition.

One of the material questions involved in this case is whether the Commissioner of Internal Revenue has authority to correct a return on the accrual basis filed under Section 13 (d) of the Revenue Act of 1916, c. 463, 39 Stat. 756, 771.

The same question is involved in the case of *American Can Co.* v. *United States,* 31 F. (2d) 730, decided by the Circuit Court of Appeals for the Third Circuit, and now pending before this Court on the petition of the Government for a writ of certiorari (No. 128). In its petition for certiorari in that case (pages 7, 19) the Government has

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assigned as one of the reasons why the writ should be granted, the same conflict of decisions which petitioner now urges (Pet. 6, 40) as a reason for the granting of its petition.

In the *American Can Co. case*, construing Section 13 (d), *supra*, it was held that the action of the Commissioner in correcting taxpayer's inventories of tin plate to conform to the requirements of his regulations amounted to a rejection of the basis on which its books of account were kept and its return filed, and that since taxpayer's return, made in accordance with its method of valuing its tin plate on its books of account, did not reflect true income, the Commissioner had no alternative than to compute the income on the cash receipts and disbursements basis under Section 12 of the Revenue Act of 1916.

Petitioner in the instant case contends that since it adopted the method of treating its munitions tax account on its books on the cash receipts and disbursements basis and not on the accrual basis, and had otherwise not consistently followed the accrual system in keeping its books of account, the decision of the Circuit Court of Appeals, in approving the action of the Commissioner in correcting its returns for the years 1916 and 1917 to the extent of disallowing for the year 1917 a deduction of munitions taxes paid in that year and in allowing the deduction in the year 1916, the year said munitions tax accrued, is in conflict with the *American Can Co.*

case. Petitioner further contends, in reliance on that case, that if the mixed basis upon which petitioner kept its books of account did not reflect its true income, the Commissioner of Internal Revenue had but one alternative under the Revenue Act of 1916 and the rulings and regulations promulgated thereunder, and that was to correct the petitioner's income-tax returns on an actual receipt and disbursement basis. (Pet. 38–40.)

While we believe the decision of the Circuit Court of Appeals in the instant case is correct, we do not oppose the petition in view of the conflict between this case and the *American Can Co. case.*

Respectfully submitted.

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AUGUST, 1929.

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